

STATE OF MICHIGAN
COURT OF APPEALS

RUSSELL HILEMAN,

Plaintiff-Appellee,

v

TRAILER EQUIPMENT, INC., a/k/a TRAILER
X-PRESS, INC., and ACCIDENT FUND
INSURANCE COMPANY OF AMERICA,

Defendants-Appellants.

UNPUBLISHED
November 21, 2006

No. 265641
WCAC
LC No. 03-000119

Before: Whitbeck, C.J., and Saad and Schuette, JJ.

PER CURIAM.

This matter has been remanded from our Supreme Court for consideration as on leave granted. Defendants appeal the decision of the Worker's Compensation Appellate Commission (WCAC) that affirmed in part and reversed in part a magistrate's closed award of worker's compensation benefits to plaintiff. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

I. FACTS

Plaintiff began his employment as a truck driver for defendant Trailer Equipment in November 2000. On July 4, 2001, plaintiff fell from an all terrain vehicle (ATV) and hit his head, suffering a fractured odontoid. He was treated by an orthopedic surgeon who placed him in a halo for several months before releasing him to work. Plaintiff testified that he was "feeling fine."

In January 2002, defendant Trailer Equipment transferred plaintiff to a "switcher job" where plaintiff used a semi truck to switch and move 30 to 50 trailers per day. Plaintiff testified that he experienced "jarring" to his neck performing these activities and developed neck pain and numbness in his right arm within a couple of weeks.

In March 2002, plaintiff sought medical treatment and was placed on restricted work, doing paper work in the office in the mornings and changing license plates in the afternoons. Plaintiff's neck symptoms increased, and he was taken off restricted work on March 25, 2002. He subsequently applied for worker's compensation benefits.

The parties deposed plaintiff's treating physical medicine and rehabilitation specialist, who opined that plaintiff's complaints of neck pain stemmed from the change in his work activities in January 2002 and that the source of plaintiff's pain was "mechanical neck pain from cervical spondylosis." The parties also deposed an independent medical examiner, who opined that plaintiff's pathology related to his non-occupational injury, the odontoid fracture. The independent medical examiner opined that the indication for a fusion of the fracture was totally independent of the presence or intensity of symptoms.

On January 9, 2003, plaintiff underwent a fusion procedure at the odontoid level to stabilize the site of the old fracture. Trial was held the following month in February 2003. At trial, plaintiff was still wearing a collar that held his head fixed. He testified that he still has arm pain and that he has lost some feeling in his right leg and arm since surgery.

The magistrate granted plaintiff a closed award of benefits. The magistrate found that plaintiff had established a disability from his last day worked to the present. However, the magistrate held that plaintiff failed to establish that the need for the January 9, 2003 fusion surgery was related to his work activities. The magistrate found that plaintiff's need for surgery was instead "solely related to nonoccupational event on July 4, 2001" and therefore that "[a]ny symptoms that plaintiff experiences as a result of the surgery are not work related."

Plaintiff appealed the closed award to the WCAC. Defendants did not file a cross-appeal, supplemental brief, or motion for remand directing the WCAC to our Supreme Court's July 30, 2003 decision in *Rakestraw v General Dynamics Land Systems, Inc*, 469 Mich 220, 231-232; 666 NW2d 199 (2003), which examined a claimant's burden of proof in establishing disability when the symptoms complained of are equally attributable to either the progression of a preexisting condition or a work-related injury.

The WCAC affirmed the magistrate's holding that plaintiff suffered a work-related injury as a result of his job duties as a switcher, noting that "no one contests that plaintiff was disabled as a result of work-related cervical symptoms from March 25, 2002 until January 9, 2003." However, the WCAC found no competent, material and substantial evidence to support the magistrate's finding that plaintiff had recovered from the work-related injury. Specifically, the WCAC found that there was "no testimony as to what, if any, relationship there is between the symptoms plaintiff suffers post surgery and those he suffered prior to the surgery" and "no medical testimony as to plaintiff's ability to work, with those symptoms." Absent medical testimony relevant to plaintiff's post-surgery symptoms and in light of plaintiff's testimony that he continues to have symptoms, the WCAC instead found that plaintiff's work-related disability continues.

Defendants filed an application for leave to appeal in this Court, which was denied. Defendants thereafter applied for leave to appeal to our Supreme Court. In lieu of granting the application, the Supreme Court remanded the case to this Court "for consideration as on leave granted." *Hileman v Trailer Equip Co*, 474 Mich 875; 704 NW2d 76 (2005). The parties have since filed their appellate briefs.

II. STANDARD OF REVIEW

In the absence of fraud, this Court must treat findings of fact made by the WCAC acting within its powers as conclusive if there is “any competent evidence” to support them. MCL 418.861a(14); *Mudel v Great Atlantic & Pacific Tea Co*, 462 Mich 691, 700-701; 614 NW2d 607 (2000). This Court’s review is at an end once it is satisfied that the WCAC has understood and properly applied its own standard of review. *Mudel, supra* at 703-704. This Court does not independently review the question whether the magistrate’s findings of fact are supported by substantial evidence. *Id.* at 700-701. This Court continues to review questions of law involved in any final order of the WCAC under a de novo standard of review. *Mudel, supra* at 697 n 3, citing *DiBenedetto v West Shore Hosp*, 461 Mich 394, 401; 605 NW2d 300 (2000).

III. ANALYSIS

Citing *Rakestraw, supra*, defendants argue that the fact that no party distinguished the post-surgical symptoms and condition from the pre-surgical symptoms and conditions requires a finding that plaintiff did not demonstrate a work-related disability as of January 9, 2003. Defendants emphasize that plaintiff bears the burden of offering more than conjecture about the source of his ongoing symptoms.

This Court lacks jurisdiction to address legal questions not raised before or addressed by the WCAC, such as defendant’s belated attempt to apply *Rakestraw* to the facts of this case. See MCL 418.861a(14); *Calovecchi v Michigan*, 461 Mich 616, 626; 611 NW2d 300 (2000). Our jurisdiction is instead limited to the question raised before and addressed by the WCAC, which was the propriety of closing plaintiff’s benefits award. In this regard, defendant’s argument reveals no error by the WCAC.

The WCAC’s decision to reject the magistrate’s finding that plaintiff’s work-related disability abated reveals no misunderstanding or misapplication of its standard of review. Further, plaintiff’s trial testimony about his continuing symptoms constitutes “any evidence” in support of the WCAC’s own finding that plaintiff established a continuing work-related disability. As there is no fraud precluding this Court from treating as conclusive the WCAC’s finding of fact, there is no proper basis upon which this Court could upset the WCAC’s decision. It is well established that the factfinder is entitled to rely upon uncorroborated lay testimony. *Lombardi v William Beaumont Hosp*, 199 Mich App 428, 435; 502 NW2d 736 (1993).

Affirmed.

/s/ William C. Whitbeck
/s/ Henry William Saad
/s/ Bill Schuette